

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
National Retail Properties Trust	:	U.S. EPA Docket No. RCRA-03-2020-0038
450 South Orange Avenue, Suite 900	:	
Orlando, FL 32801	:	CONSENT AGREEMENT
	:	
Respondent.	:	
	:	
Fuel on 1	:	Proceeding under Section 9006 of the Resource
Luzerne, PA	:	Conservation and Recovery Act, as amended,
	:	42 U.S.C. Section 6991e
	:	
Fuel Up Danville	:	
Danville, PA	:	
	:	
Unimart 04077	:	
Punxsutawney, PA	:	
	:	
Unimart 04075	:	
Punxsutawney, PA	:	
	:	
Nelly Travel Plaza	:	
Nuangola, PA	:	
	:	
Ashland Food Mart	:	
Ashland, PA	:	
	:	
Unimart 4345	:	
Effort, PA	:	
	:	
Facilities.	:	

U.S. EPA-REGION 3-RHC
FILED-29JAN2020pm12:06

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and National Retail Properties Trust (“Respondent”) (collectively the “Parties”), pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation,

Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania’s federally authorized underground storage tank program for the violations alleged herein.

2. Effective September 11, 2003, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank (“UST”) management program (“Pennsylvania UST management program”) *in lieu* of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the Pennsylvania UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania UST management program regulations are set forth in the Pennsylvania Code, Title 25, Chapter 245, Sections 245.1 *et seq.*, and will be cited hereinafter as 25 Pa. Code 245.1 *et seq.*
3. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the Administrator of the U.S. Environmental Protection Agency to assess a civil penalty against any owner or operator of an underground storage tank who fails to comply with, *inter alia*, any requirement or standard of a State underground storage tank program that has been approved by EPA pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant.
4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

5. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraphs 1 - 4.
6. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
7. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
9. Except as provided in Paragraph 8, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

10. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
11. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
12. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
13. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
15. At all times relevant to this CAFO, Respondent has been a Maryland corporation doing business in the Commonwealth of Pennsylvania.
16. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 25 Pa. Code § 245.1.
17. At all times relevant to violations alleged in this CAFO, Respondent has been the "owner", as this term is defined in Section 9001(4) of RCRA, 42 U.S.C. § 6991(4), and 25 Pa. Code § 245.1, of "underground storage tank(s)" and "underground storage tank system(s)" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 Pa. Code § 245.1, at the following facilities:
 - a. *Fuel on 1*, located at 360 Main Street in Luzerne, Pennsylvania;
 - b. *Fuel Up Danville*, located at 600 East Market Street in Danville, Pennsylvania;
 - c. *Unimart 04077*, located at 512 E. Mahoning Street in Punxsutawney, Pennsylvania;
 - d. *Unimart 04075*, located at 565 W. Mahoning Street in Punxsutawney, Pennsylvania;
 - e. *Nelly Travel Plaza*, located at 3765 Nuangola Road in Nuangola, Pennsylvania;
 - f. *Ashland Food Mart*, located at 301 Centre Street in Ashland, Pennsylvania; and
 - g. *Unimart 4345*, located at 3197 Route 115 in Effort, Pennsylvania (collectively, the "Facilities").
18. Inspections of the Facilities identified in Paragraph 17.a. and b. were conducted in 2018 by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

19. Inspections of the Facilities identified in Paragraph 17.c. through g. were conducted in 2017 by or on behalf of the Pennsylvania Department of Environmental Protection (“PADEP”) pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
20. At the time of the 2018 inspections conducted by EPA and of the 2017 inspections conducted by or on behalf of PADEP, and at all times relevant to the applicable violations alleged herein, underground storage tanks (“USTs”) and UST systems used to contain “regulated substance[s]” as this term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 Pa. Code § 245.1, were present at the Facilities.
21. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, EPA issued an Information Request letter to Respondent on April 11, 2019 concerning the USTs and UST systems at the Facilities identified in Paragraph 17.c. through g.

Count I - Failure to Conduct Line Leak Detector Testing

22. The allegations of Paragraphs 1 through 21 of his Consent Agreement are incorporated herein by reference.
23. Pursuant to 25 Pa. Code § 245.445(1), owners and operators of petroleum underground storage tank systems with pressurized piping equipped with automatic line leak detectors are required to conduct an annual test of the operation of the leak detectors in accordance with manufacturer’s requirements.
24. At the time of the 2018 inspections conducted by EPA and of the 2017 inspections conducted by or on behalf of PADEP, and at all times relevant to the applicable violations alleged herein, the piping associated with the following UST systems conveyed regulated substances under pressure, and were equipped with automatic line leak detectors:
 - a. 8,000 gallon regular gasoline UST (“Fuel on 1 UST-1”) and 8,000 gallon super gasoline UST (“Fuel on 1 UST-2”) at the *Fuel on 1* facility identified in Paragraph 17.a.;
 - b. 10,000 gallon regular gasoline UST (“Fuel Up Danville UST-1”), 6,000 gallon super gasoline UST (“Fuel Up Danville UST-2”), and 4,000 gallon diesel UST (“Fuel Up Danville UST-3”) at the *Fuel Up Danville* facility identified in Paragraph 17.b.;
 - c. 4,000 gallon kerosene UST (“Unimart 04077 UST-004”), 10,000 gallon regular gasoline UST (“Unimart 04077 UST-005”), and a 10,000 gallon premium gasoline UST (“Unimart 04077 UST-006”) at the *Unimart 04077* facility described in Paragraph 17.c.;
 - d. two (2) 10,000 gallon gasoline USTs (“Unimart 04075 UST-001” and “Unimart 04075 UST-002”, respectively) at the *Unimart 04075* facility described in Paragraph 17.d.; and
 - e. three (3) 6,000 gasoline USTs (“Ashland UST-001”, “Ashland UST-002”, and “Ashland UST-003”, respectively) at the *Ashland Food Mart* facility described in Paragraph 17.f.

25. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with the Fuel on 1 UST-1 and Fuel on 1 UST-2 UST systems at the *Fuel on 1* facility identified in Paragraph 17.a. from March 17, 2017 through April 8, 2018.
26. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with the Fuel Up Danville UST-1, Fuel Up Danville UST-2, and Fuel Up Danville UST-3 UST systems at the *Fuel Up Danville* facility identified in Paragraph 17.b. from at least January 1, 2015 through April 25, 2018.
27. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with the Unimart 04077 UST-004, Unimart 04077 UST-005, and Unimart 04077 UST-006 UST systems at the *Unimart 04077* facility identified in Paragraph 17.c. from at least January 1, 2015 through January 30, 2017; and with the Unimart 04077 UST-004 and Unimart 04077 UST-006 UST systems at the *Unimart 04077* facility identified in Paragraph 17.c from January 22, 2019 through September 2, 2019.
28. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with the Unimart 04075 UST-001 and Unimart 04075 UST-002 UST systems at the *Unimart 04075* facility identified in Paragraph 17.d. from at least January 1, 2015 through January 21, 2018 and from January 22, 2019 through September 2, 2019.
29. No evidence was provided to demonstrate that required annual operational testing was conducted of the automatic line leak detectors on pressurized piping associated with the Ashland UST-001, Ashland UST-002, and Ashland UST-003 UST systems at the *Ashland Food Mart* facility identified in Paragraph 17.f. from June 16, 2017 through December 12, 2017.
30. Respondent's role as owner in the acts or omission as alleged in Paragraphs 25, 26, 27, 28 and 29 constitute violations by Respondent of 25 Pa. Code § 245.445(1).
31. In failing to comply with 25 Pa. Code § 245.445(1), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count II - Failure to Conduct Secondary Piping Release Detection

32. The allegations of Paragraphs 1 through 31 of his Consent Agreement are incorporated herein by reference.
33. Pursuant to 25 Pa. Code § 245.442(2)(i)(B), owners and operators of petroleum USTs with pressurized piping that routinely contains regulated substances must either have an annual line tightness test conducted in accordance with 25 Pa. Code § 245.445(2) or conduct monthly monitoring conducted in accordance with 25 Pa. Code § 245.445(3).

34. No evidence was provided to demonstrate that either an annual line tightness test was conducted in accordance with 25 Pa. Code § 245.445(2) or monthly monitoring was conducted in accordance with 25 Pa. Code § 245.445(3) on pressurized piping associated with the Fuel on 1 UST-1 and Fuel on 1 UST-2 UST systems at the *Fuel on 1* facility identified in Paragraph 17.a. from March 17, 2017 through April 8, 2018.
35. Respondent's role as owner in the acts or omission as alleged in Paragraph 34 constitute violations by Respondent of 25 Pa. Code § 245.442(2)(i)(B).
36. In failing to comply with 25 Pa. Code § 245.442(2)(i)(B), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count III – Failure to Investigate a Possible Release

37. The allegations of Paragraphs 1 through 36 of his Consent Agreement are incorporated herein by reference.
38. Pursuant to 25 Pa. Code § 245.304, owners or operators of storage tanks and storage tank facilities shall initiate and complete an investigation of an indication of a release of a regulated substance, which includes conditions set forth at 25 Pa. Code § 245.304(1)-(7), as soon as practicable, but no later than seven (7) days after the indication of a release.
39. No evidence was provided to demonstrate that an investigation of an indication of a release of a regulated substance was initiated and completed within seven (7) days after an indication of a release at the:
 - a. *Fuel Up Danville* facility identified in Paragraph 17.b. from August 11, 2016 through July 26, 2017; and
 - b. *Unimart 4345* facility identified in Paragraph 17.g. from May 22, 2017 through October 1, 2017.
40. Respondent's role as owner in the acts or omission as alleged in Paragraph 39 constitute violations by Respondent of 25 Pa. Code § 245.304.
41. In failing to comply with 25 Pa. Code § 245.304, Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count IV – Failure to Conduct Cathodic Protection Testing

42. The allegations of Paragraphs 1 through 41 of his Consent Agreement are incorporated herein by reference.
43. Pursuant to 25 Pa. Code § 245.432(2)(i), owners and operators of steel UST systems equipped with cathodic protection systems are required to test for proper operation within 6 months of installation and at least 3 years thereafter by a qualified cathodic protection tester for as long as the UST system is used to store regulated substances.

44. No evidence was provided to demonstrate that 3 year tests of the cathodic protection system were conducted for the steel Unimart 04077 UST-004, Unimart 04077 UST-005, and Unimart 04077 UST-006 UST systems at the *Unimart 04077* facility identified in Paragraph 17.c. from January 1, 2015 through January 31, 2017.
45. Respondent's role as owner in the acts or omission as alleged in Paragraph 44 constitute violations by Respondent of 25 Pa. Code § 245.432(2)(i).
46. In failing to comply with of 25 Pa. Code § 245.432(2)(i), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count V – Failure to Have a Line Leak Detector

47. The allegations of Paragraphs 1 through 46 of his Consent Agreement are incorporated herein by reference.
48. Pursuant to 25 Pa. Code § 245.442(2)(i)(A), owners and operators of petroleum UST systems monitor underground piping that routinely contains regulated substances under pressure for releases by equipping the piping with an automatic line leak detector in accordance with 25 Pa. Code § 245.445(1).
49. No evidence was provided to demonstrate that the underground piping associated with the 10,000 gallon diesel UST (“Unimart 04075 UST-003”) system at the *Unimart 04075* facility identified in Paragraph 17.d. was equipped with an automatic line leak detector from at least January 1, 2015 through September 3, 2019.
50. Respondent's role as owner in the acts or omission as alleged in Paragraph 49 constitute violations by Respondent of 25 Pa. Code § 245.442(2)(i)(A).
51. In failing to comply with 25 Pa. Code § 245.442(2)(i)(A), Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count VI – Failure to Have a Method of Tank Release Detection

52. The allegations of Paragraphs 1 through 51 of his Consent Agreement are incorporated herein by reference.
53. Pursuant to 25 Pa. Code § 245.441(a) and (c), owners and operators of new and existing underground storage tank systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
54. Pursuant to 25 Pa. Code § 245.442(1), petroleum underground storage tank systems shall be monitored at least every 30 days for releases using one of the methods listed in 25 Pa. Code § 245.444(4)-(9), except that:
 - (i) Underground storage tank systems that meet the performance standards in 25 Pa. Code §§ 245.421 and .422, and the monthly inventory control

requirements in 25 Pa. Code § 245.444(1) or (2), may use tank tightness testing at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under 25 Pa. Code § 245.422(b), whichever is later.

- (ii) Underground storage tank systems that do not meet the performance standards in 25 Pa. Code §§ 245.421 or .422 may use monthly inventory controls, conducted in accordance with § 245.444(1) or (2), and annual tank tightness testing until December 22, 1998, when the tank shall be upgraded under 25 Pa. Code § 245.422 or permanently closed under 25 Pa. Code § 245.452.
- (iii) Tanks with a capacity of 550 gallons or less may use manual tank gauging, conducted in accordance with 25 Pa. Code § 245.444(2).
- (iv) Tanks with capacity of 551 to 1,000 gallons using the longer test times specified may use manual tank gauging, conducted in accordance with 25 Pa. Code § 245.444(2).

55. At all times relevant to the violations alleged herein, the method of release detection for the three (3) 8,000 gallon gasoline USTs (“Nelly UST-1”, “Nelly UST-2”, and “Nelly UST-3”, respectively) and the single five thousand gallon diesel UST (“Nelly UST-4”) at the *Nelly Travel Plaza* facility identified in Paragraph 17.e. was automatic tank gauging pursuant to 25 Pa. Code § 245.444(4).

56. On at least 895 days from January 1, 2015 through December 12, 2018, no evidence was provided to demonstrate that Nelly UST-1 and Nelly UST-2 at the *Nelly Travel Plaza* facility identified in Paragraph 17.e. were monitored at least every 30 days for releases using automatic tank gauging in accordance with 25 Pa. Code § 245.444(4).

57. During the period of time stated in Paragraph 56, no evidence was provided to demonstrate that any of the release detection methods allowed under 25 Pa. Code § 245.442(1)(i)-(iv) were used or monitored at least every 30 days for releases using other methods under 25 Pa. Code §245.444(4)-(9) for Nelly UST-1 and Nelly UST-2 at the *Nelly Travel Plaza* facility identified in Paragraph 17.e.

58. Respondent’s role as owner in the acts and/or omissions as alleged in Paragraphs 56 and 57 constitute violations by Respondent of 25 Pa. Code §§ 245.441 and .442.

59. In failing to comply with 25 Pa. Code §§ 245.441 and .442, Respondent is subject to the assessment of penalties under Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

60. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of

NINETY-ONE THOUSAND AND SIXTY-ONE dollars (\$91,061), which Respondent shall be liable to pay in accordance with the terms set forth below.

61. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), requires EPA to take into account, including, the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirement. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 5, 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations* which reflects the statutory penalty criteria and factors set forth at Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
62. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, Docket No.: RCRA-03-2020-0038;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029
Abramson.Jennifer@epa.gov

63. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
64. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
65. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
66. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
67. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
68. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

69. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
70. To the best of its knowledge, Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

71. Respondent represents that it sold the *Fuel on 1* facility identified in Paragraph 17.a. on October 26, 2018 and that it sold the *Nelly Travel Plaza* facility identified in Paragraph 17.e. on September 26, 2019, and therefore does not attest to the current compliance status of these facilities. As to the other facilities identified in Paragraph 17, Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

72. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

73. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the

Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

74. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

75. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

76. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondent:

National Retail Properties Trust, *RKS MK VLB*
a Maryland real estate investment trust

Date: 11/21/2020

By: *Christopher P. Tessitore*


Name: Christopher P. Tessitore

Title: Trustee
National Retail Properties Trust

For the Complainant:


After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JAN 28 2020

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 1/23/2020

By: 
Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA – Region III

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, National Retail Properties, Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

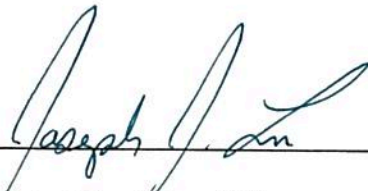
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 5, 2018 *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations*; the statutory factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c); the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19; and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***NINETY-ONE THOUSAND AND SIXTY-ONE dollars (\$91,061)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Jan. 29, 2020
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Lisa M. Bruderly
Babst Calland
Two Gateway Center
Pittsburgh, PA 15222

Copy served via **Hand Delivery or Inter-Office Mail** to:

Jennifer Abramson
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: JAN 29 2020

Berwin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

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